

SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 574

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
INVESTIGATING THE FEASIBILITY OF REFUNDS TO NATIVE AMERICAN
VETERANS FOR STATE PERSONAL INCOME TAXES IMPROPERLY WITHHELD
FROM MILITARY PAY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. LEGISLATIVE FINDINGS.--

A. Native Americans have had a long history of
serving their country through active duty in the armed forces
of the United States during periods of both war and peace and
have made great sacrifices in serving their country through
active duty in the military during periods of war and peace.

B. Native American veterans domiciled on tribal
lands during their periods of active military service may have
been exempt from paying state personal income taxes on their

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1 military income, but may have had state personal income taxes
2 improperly withheld from their military income.

3 C. Native American veterans now are barred by the
4 state statute of limitations from claiming refunds of state
5 personal income taxes that may have been improperly withheld
6 from their military income, and even if not barred by the
7 statute of limitations, the passage of time extending to
8 decades will make it difficult for many Native American
9 veterans to meet strict standards of proof that they are
10 entitled to a refund of improperly withheld state personal
11 income taxes.

12 D. It is incumbent upon the state to ensure that it
13 was not unjustly enriched by the improper withholding of state
14 personal income taxes from Native American veterans, and the
15 state should implement a feasible means of refunding to Native
16 American veterans any state personal income taxes that were
17 improperly withheld from military pay.

18 Section 2. DEFINITIONS.--As used in this act:

19 A. "department" means the veterans' services
20 department;

21 B. "fund" means the Native American veterans'
22 income tax settlement fund; and

23 C. "secretary" means the secretary of veterans'
24 services.

25 Section 3. NATIVE AMERICAN VETERANS' INCOME TAX

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1 SETTLEMENT FUND--CREATED--PURPOSE--APPROPRIATIONS.--

2 A. The "Native American veterans' income tax
3 settlement fund" is created as a nonreverting fund in the state
4 treasury and shall be administered by the department. The fund
5 shall consist of money that is appropriated or donated or that
6 otherwise accrues to the fund. Money in the fund shall be
7 invested by the state investment officer in the manner that
8 land grant permanent funds are invested pursuant to Chapter 6,
9 Article 8 NMSA 1978. Income from investment of the fund shall
10 be credited to the fund.

11 B. The department shall establish procedures and
12 adopt rules as required to administer the fund and to make
13 settlement payments from the fund as approved by the secretary.

14 C. Money in the fund is appropriated to the
15 department to make settlement payments to Native American
16 veterans who had state personal income taxes improperly
17 withheld from their military pay. Money shall be disbursed
18 from the fund only on warrant of the secretary of finance and
19 administration upon vouchers signed by the secretary of
20 veterans' services or the secretary's authorized
21 representative. Any unexpended or unencumbered balance
22 remaining at the end of a fiscal year shall not revert to the
23 general fund.

24 Section 4. DUTIES OF THE SECRETARY.--

25 A. The secretary shall conduct a study in

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1 cooperation with the taxation and revenue department to
2 determine whether Native American veterans who were domiciled
3 on tribal lands during the period of their active military duty
4 had state personal income taxes improperly withheld from their
5 pay and if so, to determine the amount of state personal income
6 taxes improperly withheld and the number and identity of Native
7 American veterans or their survivors affected by the improper
8 withholding of state personal income taxes.

9 B. The secretary shall promulgate rules for a state
10 program to compensate Native Americans veterans or their
11 survivors for state personal income taxes improperly withheld
12 from military income while on active military duty.

13 C. The secretary shall report to the appropriate
14 interim legislative committee no later than October 1 of each
15 year regarding estimates of the amount of state personal income
16 taxes improperly withheld from the military pay of Native
17 American veterans, the number of Native American veterans or
18 their survivors affected by the improper withholding of state
19 personal income taxes, total expenditures from the fund for the
20 previous fiscal year and the anticipated appropriations to the
21 fund needed to pay for settlements to be entered into for the
22 next fiscal year.

23 Section 5. APPROPRIATION.--One hundred thousand dollars
24 (\$100,000) is appropriated from the general fund to the
25 veterans' services department for expenditure in fiscal year

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1 2009 to carry out the provisions of this act. Any unexpended
2 or unencumbered balance remaining at the end of fiscal year
3 2009 shall revert to the general fund.

4 Section 6. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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